

Frequently Asked Questions

Utah Residence Lien Recovery Fund

Updated April 11, 2007

Please note that this information is not intended to be specific legal advice or a substitute for advice from competent legal counsel. This is a general overview of the law for informational purposes only. You should consider obtaining competent legal counsel to assist you in making any major decisions about your rights and responsibilities under the Act and to represent you in any actions that you may take as a result of the Act.

1. What is a mechanics' lien and why can it be filed on my property?

Under the provisions of the Utah Mechanics' Lien Law (Utah Code Title 38, Chapter 1), any person who provides labor or materials for a construction project may file a mechanics' lien to recover the value of services provided if he has not been paid. The notice of lien is not a judgment against you or your property. It serves only as a notice that there is a dispute relating to your property that has not yet been resolved. To enforce the lien, the entity claiming lien must file a foreclosure action (lawsuit) against you and must obtain a judgment against you as a result of the foreclosure action. This requires the lien claimant to prove in court that it is entitled to payment from you and provides you with an opportunity to prove to the court that the lien claim is unjustified.

2. How does the Lien Recovery Fund protect my home from mechanics' liens?

The Residence Lien Restriction and Lien Recovery Fund Act **does not** prohibit the filing of mechanics' liens but does provide homeowners a defense to prevent a lien from being enforced.

To qualify for this protection the homeowner must do the following:

1. Contract **in writing** with a **licensed contractor**, a contractor that is exempt from licensure under the Utah Construction Trades Licensing Act, a factory built housing retailer, or a real estate developer for the purchase of or construction on a single-family or duplex residence.
2. **Pay the contract price in full** to the contractor, factory built housing retailer, or real estate developer, including any amendments to the contract.
3. **Occupy the residence** as a primary or secondary residence within 180 days of completion of construction or rent it to a tenant or lessee who occupies it as a primary or secondary residence within 180 days of completion of construction.

3. How do I prove I am protected by the Act?

You can prove you are protected by the Act by applying for and receiving a Certificate of Compliance. The Division grants the Certificate after you complete the application form and provide certain required documents.

When applying for a Certificate of Compliance you will need the following documents:

1. A copy of the written contract between you and the original contractor, factory built housing retailer, or real developer for the construction on or purchase of your single family or duplex residence.
2. Evidence that the person with whom you contracted is a real estate developer, a factory built housing retailer, or is not required to have a contractor's license—if applicable.
3. Evidence that you paid the contractor, factory built housing retailer, or real estate developer in full according to the terms of your contract and any amendments to the contract.

4. When can I apply for a Certificate of Compliance?

You may apply for a Certificate of Compliance at any time. The only restriction is you must apply for the Certificate within 30 days of the date you receive the first summons and complaint in a lien foreclosure action.

5. What responsibility does the lien claimant have to notify me about the Certificate of Compliance application?

According to Utah Code Ann. § 38-1-11(4), when the lien claimant initiates a lawsuit to enforce a claim of lien, he or she is required to serve you with an application to the Division for a Certificate of Compliance. If the lien claimant does not provide you with this form, the lien is unenforceable.

6. What is my protection from mechanics' liens once I receive a Certificate of Compliance?

The Act provides a lien claimant must release its lien on your property within 15 days from the date you mail a copy of your Certificate of Compliance to the lien claimant **by certified mail**. The 15-day period begins to run on the postmark date of your mailing a copy of Certificate to the lien claimant.

7. What happens if I cannot clearly establish compliance with Act requirements?

If you cannot clearly establish that you have complied with the requirements of the Act, you should seek competent legal counsel to determine what additional evidence or legal theories can be used as defense against the lien.

8. After I purchased my residence from its previous owner, I was liened by subcontractors or suppliers. Do I have any rights under the Act?

If you purchased your single-family or duplex residence from a prior homeowner within 180 days from the date of completion of construction, you have the same rights against any liens filed on your property after the date of your purchase as the original homeowner.

9. I paid the liens. How can I receive reimbursement from the Fund?

Homeowners **cannot** receive payment from the Fund. The homeowner protection arises from the Certificate of Compliance as explained above.

10. How can I determine whether a contractor is currently licensed?

Visit the Division's license verification site at www.dopl.utah.gov or calling (801) 530-6104

11. I still have questions about the Act. What can I do?

If you still have questions after reading these materials, the Division will gladly answer them. You may contact the Program Secretary at (801) 530-6104; she will be glad to either answer your questions or direct you a Fund employee who can assist you.